



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AL STOBBER CONSTRUCTION
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Parties	File No.	Codes:
(T) [J.F.]	210042911	CNR, MNDCT, OLC, LRE
(L) [A.S.] Construction Ltd.	210046954	MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed claims for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated August 3, 2021 ("10 Day Notice");
- a monetary order for damage or compensation under the Act of \$35,000.00;
- an Order for the Landlord to Comply with the Act or tenancy agreement; and
- an Order to suspend or restrict the Landlord's right to enter.

The Landlord filed claims for:

- a monetary order for compensation for damage under the Act of \$360.00;
- a monetary order for unpaid rent of \$550.00; and
- recovery of their \$100.00 Application filing fee.

Two agents for the Landlord, L.F. and L.P. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing besides me were the

Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents and the Landlord's evidence by email, sent on August 21, 2021. The Agent said that the Tenant had come to the Landlord's office with a substituted service form authorizing the Parties to serve each other via email.

However, the Agent said that the Tenant did not serve the Landlord with any documents regarding his Application.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on August 19, 2021; however, the Tenant did not attend the teleconference hearing scheduled for December 7, 2021 at 11:00 a.m. (Pacific Time). The phone line remained open for over 15 minutes and was monitored throughout this time.

Rule 7.1 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Landlord's Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on December 7, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 19 minutes; however, neither the Tenant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and because the Tenant failed to serve the Landlord with his Notice of Hearing and evidence, I **dismiss the Tenant's Application without leave to reapply**, pursuant to Rule 7.3 and section 62 of the Act.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications. The Agent

confirmed her email address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agents that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy agreement states, and the Agents confirmed that the fixed-term tenancy began on December 1, 2018, with a monthly rent of \$1,105.00, due on the first day of each month. The Agents confirmed that the Tenant paid the Landlord a security deposit of \$552.50, no pet damage deposit, but also a remote deposit of \$75.00. The Agents confirmed that the Landlord holds these deposits for the claims in their application.

#1 COMPENSATION FOR DAMAGE UNDER THE ACT → \$360.00

In their application, the Landlord said the following about this claim:

6 HOURS OF CLEANING AT \$30/HR, PROFESSIONAL CARPET CLEANING
AND PROFESSIONAL BLIND CLEANING

In the hearing, I asked the Agents to explain this claim and how they calculated it. The Agents said:

That was an estimated total based off of the move out when [L.P.] and I attended. The Tenant did not attend. We sent an estimated amount based on the [condition inspection report ("CIR")] . On pages 54 – 56 of Landlord's evidence – see receipts for carpet cleaning – we were off by about \$3.00. Blind \$78.70 cleaning, \$150.00 to clean the suites and I had estimated \$180.00

The Landlord submitted invoices for the following claims:

Activity	Date	Details	Amount paid	TOTALS
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Unit cleaning	Aug 17/21	Cleaned appliances, cupboards, drawers, shelves, counter, sink, baseboards, switch covers, bathroom, removed garbage, windows, siding, swept deck, vacuumed, washed floors. 6 hrs @ \$25/hr	\$150.00	\$150.00
Carpet cleaning	Aug 20/21	1 bedroom, and deck	\$110.00 \$ 10.00 \$ 6.70 taxes	\$126.70
Cleaned blinds	Aug 30/21	Clean 5 blinds at \$10.99 ea. Replaced tilter	\$54.95 \$20.00 \$ 3.75 GST	\$ 78.70
			TOTAL	\$355.40

The Landlord submitted copies of email communications between the Parties. On August 16, 2021, the day that the Tenant vacated the rental unit, he wrote the Agents the following email:

Hello and good day. I have been evacuated from the place I have moved too and I don't have enough gas money to get there and back. I won't be able to come to meet you today. The keys are there on kitchen counter. I was to do more cleaning today not able to do so. I have easy offed the oven but not cleaned it out that was the plan for this morning. I have done the best I can do with the available resources I have. .

[reproduced as written]

The Landlord submitted photographs of the rental unit, once the Tenant had moved out. The refrigerator was dirty throughout, including the doors.

The stovetop had the elements removed and appeared relatively clean for a used appliance. There was some dirt where the trays should go, but this appeared to be no more than normal wear and tear.

The inside of the stove had cleaner sprayed throughout it, but this had not been cleaned out, nor had the oven drawer been cleaned.

Drawers were dirty, the stovetop fan cover was dirty, cupboard doors were dirty, cupboard shelves were dirty, the kitchen and bathroom floors had not been swept or

mopped; the bathtub and sink in the bathroom were dirty. It looked like there had been no attempt to clean the rental unit, aside from spraying oven cleaner in the appliance.

#2 MONETARY ORDER FOR UNPAID RENT OF \$550.00

In their Application, the Landlord said the following about this claim:

TENANT FAILED TO PAY AUGUST 2021 RENT. TENANT WAS ISSUED A 10 DAY NTE. TENANT MOVED OUT AUGUST 16, 2021. WE ARE CHARGING THE TENANT RENT FROM AUGUST 1-15, 2021 IN THE AMOUNT OF \$550. WE HAVE RERENTED THE SUITE FOR AUGUST 23, 2021 SO WE MISS OUT ON 7 DAYS OF RENT WHICH WE ARE NOT CHARGING THE TENANT FOR.

In the hearing, the Agents said the following about this claim:

So, we gave him a 10 Day Notice because he didn't pay August's rent. He did move out – see his email pages 10 – 15. He eventually moved out on the 15th, so that is for the half of the month of August. We rented it as of the 23rd, but I'm not going after those 8 days.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Agents testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each applicant must prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

("Test")

#1 COMPENSATION FOR DAMAGE UNDER THE ACT → \$360.00

Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find based on the Landlord's evidence that the Tenant did not leave the rental unit reasonably clean. Rather, I find that the Tenant made little effort to clean the rental unit before he vacated it.

I find that the Landlord is reasonable in this claim. Pursuant to sections 37 and 67 of the Act, I award the Landlord with **\$355.40** from the Tenant for the total amount of the receipts evidencing that the Landlord was required to clean the rental unit after the Tenant vacated it, including carpets and blinds.

#2 MONETARY ORDER FOR UNPAID RENT OF \$550.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Further, the Landlord is claiming only half a month's rent, even though there were eight days in August in which the Landlord did not receive rent for the unit. I find that the Landlord is being reasonable and is mitigating their damages by having re-rented the unit as soon as possible after the Tenant vacated it.

Based on the evidence before me, I find that the Landlord is successful in their application, having provided sufficient evidence to meet their burden of proof on a balance of probabilities. I find that the Tenant breached section 26 of the Act by not paying the rent owing to the Landlord in August 2021. Accordingly, I grant the Landlord a monetary award of **\$550.00** in unpaid rent, pursuant to sections 26 and 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security and remote deposits of \$627.50, in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain \$627.50 of the Tenant's deposits in partial satisfaction of the monetary awards.

The Landlord is awarded \$355.40 for having to clean the rental unit, and \$550.00 for unpaid rent for a total award of \$905.40. I also award the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

Cleaning	\$355.40
Unpaid rent	<u>\$550.00</u>
Sub-total	\$905.40
Less deposits	<u>(\$627.50)</u>
	\$277.90
Plus filing fee	<u>\$100.00</u>
TOTAL	<u>\$377.90</u>

The Landlord is awarded \$905.40 from the Tenant, pursuant to section 67 of the Act. The Landlord is authorized to retain the Tenant's security and remote deposits in partial satisfaction of the monetary awards. Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order of **\$377.90** from the Tenant for the remainder owing of the awards.

Conclusion

The Tenant's Application is dismissed without leave to reapply, as the Tenant failed to attend the hearing and he failed to serve the Landlord with his Notice of Hearing documents and evidence.

The Landlord is successful in their Application, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord is awarded \$355.40 for cleaning the unit at the end of the tenancy and \$550.00 from the Tenant for unpaid rent. Given their success, the Landlord is also awarded recovery of the \$100.00 application filing fee for these claims.

The Landlord is authorized to retain the Tenant's \$627.50 deposits in partial satisfaction of these awards. The Landlord is granted a Monetary Order of **\$377.90** from the Tenant for the remaining awards owed to the Landlord by the Tenant.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential

Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 16, 2021

Residential Tenancy Branch